

EXHIBIT 1

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

IN RE: SUBWAY FOOTLONG
SANDWICH MARKETING AND
SALES PRACTICES LITIGATION

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Case No. 2:13-md-02439-LA

Judge Lynn Adelman

DECLARATION

I, JOHN A. GORDON, hereby state and certify as follows:

1. I am a chain restaurant earnings and economics expert for Pacific Management Consulting Group. My *curriculum vitae* is attached hereto.

2. For twelve (12) years, I have provided clients with research, intelligence, and analysis of restaurant sales, management, financial and operating systems, marketing systems, new system standards, and other areas within my expertise.

3. I have received my Certified Forensic Financial Analyst Designation (CFFA).

4. I received my Bachelors of Science from Indiana University in 1982.

5. I have submitted declarations, affidavits, and depositions as an expert witness in state courts, federal district courts, and federal circuit courts.

6. Pursuant to the proposed settlement agreement in the above-captioned case, Doctors Associates, Inc. ("DAI") has agreed to comply with a court-ordered injunction requiring that it will take a number of actions, that as much as is commercially reasonable, will ensure that all "Subway Six Inch" sandwiches be six (6) inches in length, and all "Subway Footlong" sandwiches be twelve (12) inches in length. Pursuant to the settlement, the injunction will be in place for the next four (4) years (i.e. calendar years 2016-2019).


7. I was retained by Zimmerman Law Offices and asked to determine the value to the Class of the injunctive relief, which is designed to prevent DAI from selling "Subway

Footlong” sandwiches and “Subway Six Inch” sandwiches that are deficiently short in length.

REDACTED

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 5th day of January, 2016.



John A. Gordon

Pacific Management Consulting Group

Chain Restaurant Analysis and Advisory



John A. Gordon, MAFF

Restaurant Subject Matter Expert, October 2015

5980 Mission Center Road, Unit A, San Diego, CA 92123

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Website: www.pacificmanagementconsultinggroup.com

Curriculum Vitae

Functional Overview: chain restaurant subject matter expert, focusing on operations, earnings and economics topics. Restaurant sector financial and operations analysis. Management and related business systems creation, assessment and execution; organizational, and financial management assessment, research and advisory.

Typical Project Focus: Consulting firm subject matter expert support, sell side restaurant equities research support, litigation support, restaurant equities analysis, earnings analysis, revenue and expense analysis, M&A due diligence, special projects, economic and business feasibility studies, new business start-up, revenue enhancement, cost containment, profitability improvement, and organizational transformation advisory work.

Typical Clients: investors, management consulting firms, sell side investment banking research team, attorneys, franchisee associations, franchisees, hedge funds, research firms.

Project and Subject Matter Experience: Quick Service Restaurants, Fast Casual Dining Restaurants, Fine Dining Restaurant sectors. Business and economics research. Financial and operational analysis, earnings forecasting, planning, operational and capital budgeting, financial and operational reporting. Expert research and consulting litigation support. Operational and management systems assessment, improvement and implementation. Restaurant, hospitality, and foodservice sector organization management structure, systems and procedures development. Balanced scorecard metrics and benchmarking. Business purchase due diligence and business plan creation. Operational analysis, revenue enhancement and cost containment, strategy creation and execution. Site selection and real estate analysis; marketing, information technology, human resources. Management and business process improvement.

Summary Selected Representative Project Experience:

- **Restaurant Subject Matter Expert** for investment banking sell side restaurant team.
- **Subject Matter Expert** for international strategy consulting firm working major chain restaurant improvement projects (many engagements).

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- Expert Consultant and Expert Witness detailed restaurant business and economics analysis, major deep dive research project actions, projects underway (many separate projects). SEC earnings (10b5 matters), standards of practice, franchise practices, wage and hour expert actions.
- Restaurant marketing, menu, sales, and earnings forecasting and analysis centered on publicly traded restaurant companies (many engagements).
- Economic and Business feasibility assessments (numerous) for various hospitality and retail sector clients. Teaching and counseling of clients.
- Research: identification of econometric factors by market to create unit growth model, by major market, major QSR operator client.
- Management Systems assessment, conceptualization, planning and implementation for retail/hospitality sector client, via two year long project.
- Business assessment and profit improvement plan creation for service sector (restaurant and retail sector clients, numerous). Focused on operations, financial management, marketing, concept design and human resources issues.
- New business start-up planning, business plan analysis and review, counseling (numerous clients)
- Operational Reporting: assessment of operators' financial and operational systems, creation and refinement of revenue, expense and other balance scorecard like metrics, data collection means created, worked into financial reporting process.
- Reimplementation of Standard food and labor cost system: baselining and assessment of current system, operational gap analysis and assessment, creation of new system standards, selection of new platform, project management, creation of inputs, creation of cost standards, system documentation, training and creation of user guides, travel and implementation to field operators, cost reporting and analysis, system maintenance, continued testing, sampling and refreshment, for employer, \$400M national chain restaurant operator.
- Executive search and business intelligence projects for several chain restaurant operators.

Representative Summary Selected Project Engagement Experience

- Engagement One: Chain Restaurant SEC 10b5 Securities Action: chain restaurant federal securities matter (earnings disclosure) item. Provided company and relevant peer research, intelligence and analysis, input to complaints and answer, etc. Federal 2nd and 6th Circuit matter. 12-month engagement completed 2008.
- Engagement Two through Four: Chain Restaurant Franchisee v. Franchisor Actions Multiple Federal and State actions. Provided company and relevant sector operations, management, supply chain, financial management research, intelligence and analysis, input to complaints, answers, and pleadings. 18-month engagement, ending November 2009. Engagement Two Outcomes: Settled 2009 with large damages pool liquidating multiple state and federal class actions, in one of the largest settlements ever in the chain restaurant sector. Engagement Three: settled 2011. Engagement Four; settled 2012.
- Engagement Five: Chain Restaurant Menu Labeling Action: provided declaration and deposition, and relevant company intelligence, analysis and research on restaurant menu and sales, product mix and financial returns topics. California Alameda County Superior Court Action, 6-month engagement. Outcome: on Appeal, 2011.
- Engagement Six: Chain Restaurant SEC 10b5 Securities Action: Chain Restaurant Federal securities action, for plaintiffs. Provided company and sector research,

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intelligence and analysis, input to complaints and answer, etc. Federal 8th Circuit matter. Settled, 2011.

- Engagement Seven, Eight and Nine: Franchisee Association support: provide research and analysis of financial matters to QSR sector franchisee associations. Ongoing engagements.
- Engagement Ten: Support of International Strategy Management Consulting Firm as restaurant subject matter expert; multiple engagements, ongoing, confidential.
- Engagement Eleven: Support of Investment Firm, Equity Analysis Team support; ongoing, confidential.

Other Financial Management Related Projects:

- Financial Management Chair (Elected), and Committee Member (Appointed), Citizens Oversight Committee, for \$2 billion California Schools construction program.
- Chair, Major Municipal Candidate's Fiscal Advisory Team: worked with team of professionals to create actionable business recovery plan for leading San Diego Mayoral candidate.
- Municipal City Charter Review Commission Appointed Member; reviewed assessed and composed recommended changes to City of San Diego Charter (constitution like document).
- Creation and Implementation of Board of Directors Governance System: creation, implementation, participation and recommendation with senior leadership on Hospitality Operator's Board of Directors governance program, creation of financial and operational standards, creation of budget calendar and review process, software modification and coding, training program creation, field training, execution of multi-year operational and capital budgets, including budget formulation, review, approval and execution stages each year, for employer, \$700M hospitality operator.

Education and Certifications

- BS, Business, Indiana University, 1982.
- Master Analyst, Financial Forensics, National Associated of Certified Valuers and Analysts, 2012.

Employment Summary

- PRINCIPAL, PACIFIC MANAGEMENT CONSULTING GROUP, 2003 to present
Management Consulting Group, 100% focused upon restaurants, focus on operational, financial and management analysis and advisory topics.
- MANAGING SENIOR ASSOCIATE, BOOZ ALLEN HAMILTON, San Diego, CA, 2000 to 2002
Worldwide premier Management and Technology Consulting firm, Economic Analysis Group.
- CHIEF FINANCIAL OFFICER (1996-2000), and earlier, MANAGER OF FINANCIAL ANALYSIS (1989-1995) NAVY MWR (Hospitality) Program, Washington DC.
\$700M international restaurant, hospitality and services operator, franchisor and franchisee.

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- Earlier: Cost/Financial Analyst, Multi-Unit Supervisor, General Manager
Two NYSE listed restaurant concerns, Hardees (QSR Burger Sector) and Ponderosa, Inc., (NYSE listed Family Dining Sector (1978-1989)).

Current and Prior Affiliations

Member of: National Association of Certified Valuators and Analysts, Gerson-Lehrman Group Expert Network, Coalition of Franchisee Associations, Board Member, San Diego Food and Beverage Association, California Restaurant Association. Working two franchise space related policy working groups.

Overview of Related Expert Consulting/Witness Roles, and Publications

References: client, business and personal references available upon request.

Publications: Restaurant related professional journals such as Restaurant Research, Restaurant Finance Monitor, Franchising Valuation Reporter, and others.

Selected Press Quotes: CBS, CNN, ABC, Associated Press, Wall Street Journal, Bloomberg, The Economist, National Public Radio, CBS Radio, Franchise Times, QSR Magazine, Nation's Restaurant News, Washingtonian Magazine, Columbus Dispatch, Los Angeles Times, Denver Post, among many others.

All Expert and Consulting Expert Engagements, Depositions Taken:

Engagement One: Franchisee v. Franchisor matter, National Franchisee Association v. Burger King Corporation, United States District Court, Southern District of Florida, 09-23435, for plaintiff. Chain restaurant franchisee v. franchisor matter provided expert analysis and research on chain restaurant earnings, economics and related business matters. Deposed, November 18, 2010, in San Diego. Status: matter settled, March 2011.

Engagement Two: Chain Restaurant Menu Labeling Action, for plaintiff. Jones v. Applebee's, Superior Court of California, County of Alameda, case number RG08391858. Provided declaration and deposition, and relevant Applebee's and related chain restaurant company intelligence, analysis and research on restaurant menu and sales, product mix, cost and related financial returns topics. Deposed, September 15, 2009 in San Francisco. Status: appeal.

Engagement Three: Franchisee v. Franchisee Action, for plaintiff, Lake Elsinore Restaurant Corporation v. Highgrove, et al, State of California, Riverside County Superior Court, Case Number, 72-517Y0113309 SIM. Provided expert analysis and research on chain restaurant sales, earnings and economics regarding Denny's and other chain restaurants. Deposed, November 16, 2010 in Temecula, CA. Status: matter settled in November 2010.

Engagement Four: Restaurant Tenant-Landlord Action, for plaintiff. Primo Hospitality Group v Americana at Brand, State of California, Los Angeles County Superior Court, case number BC-

432109. Provided deposition on expected and actual restaurant economics. Deposed, April 15, 2012. Status: settled, 2012, with offsetting damages paid to client

Engagement Five: Restaurant Tenant-Landlord Action, for plaintiff. Hanna v. Ergarian, Fresno County Superior Court, 08CECG02258, deposed September 2012, trial testimony, November 17 2012. Status: dismissed, 2013.

Engagement Six: Restaurant Franchisee v. Franchisor Action, for plaintiff. Camille's v. DFO, Los Angeles County Superior Court, BC 466686. Provided deposition on expected and actual restaurant economics. Deposed, Los Angeles, July 20 2012. Outcome: matter settled, 2012, with damages paid to client.

Engagement Seven: Restaurant Franchisee v. Franchisor Action, for defendant. Keg v. Jones, Maricopa Superior Court for the State of Arizona. Deposed Phoenix, AZ., November 17 2013. Outcome: Jury finding in favor of client, \$3.5 million, March 2014.

Engagement Eight: Restaurant Offering Circular Action, for plaintiff. Perez v. Del Rio, American Arbitration Association, Number 7251700904. Report provided and deposed, November 16 2014. Status: arbitration concluded, dismissed.

Engagement Nine: Restaurant Franchising Matter, for plaintiff. Wilbern v. CFSI. US Federal District Court, Northern District of IL, 1:13-cv-03269. Report, November 2014, Deposition December 11-12, San Diego, CA and February 27, 2015, Chicago, IL. Certified as expert, September 2015. Ongoing.

Engagement Ten: Restaurant Franchising Matter: for defendant, Dunkin Brands, Inc., v. C3WAIN, U.S. Federal District Court, District of New Jersey, Number 3:13-cv-6865. Report and Deposition. Deposition, February 17, 2015. Ongoing, September, 2015.

Engagement Eleven: Restaurant Wage and Hour Matter, for plaintiff, Ochoa v. McDonald's, U. S. Federal District Court, Northern District of California, 14-cv-02098. Provided affidavit on franchising practices (sealed). Status: ongoing, September 2015.

Engagement Twelve: Restaurant Wage and Hour Matter, for plaintiff, Scott v. Chipotle, U.S. District Court, Southern District of NY, 12-cv-0833. Provided expert report on restaurant operations and economics topics (sealed). Status, ongoing, September 2015.

Other Expert Litigation Related Engagements, Expert Research and Consulting Provided:

Engagement One: Chain Restaurant SEC 10b 5 Securities Action, US District Court, Eastern District of Missouri, Western Washington Laborer-Employers Pension Trust v. Panera Bread, case number 4:08-cv-00120 ERW: chain restaurant federal securities matter, for plaintiff. Provided company and relevant peer research, intelligence and analysis, input to complaints and answer, etc. Outcome: Matter settled, March 2011, with \$5 million award to client.

Engagement Two: Chain Restaurant SEC 10b 5 Securities Action, US District Court, Middle District of Florida, Plumbers and Pipefitters Local 51 Pension Fund, v. Darden Restaurants,

case number 6:08-CV-00388-PCF-DAB, chain restaurant federal securities matter for plaintiff. Provided company and relevant peer research, intelligence and restaurant earnings and economics analysis. Outcome: Matter dismissed 2009.

Engagement Three: Franchisee v. Franchisor Action, Siemer et al, v. The Quiznos Franchise Company, US District Court, Northern District of Illinois, case number 07-cv-2170, for plaintiffs. Provided Quiznos and restaurant peer company, and overall restaurant sector operations, management, supply chain, financial management research, intelligence and analysis. Outcome: Matter settled 2010, with \$210 million in judgment outyears value to my clients.

Engagement Four: Franchisee v. Franchisor Action, Martrano v. Quiznos, et al. U.S. District Federal Court, Western District of PA, case number 2:08-CV-0932. Provided expert report focusing on Quiznos related earnings and economics topics. Matter settled, with damages paid to client, 2012, \$500,000.

Engagement Five: Restaurant Operations Analysis Matter, Distant Sun Restaurants, Inc., v. North Pacific, Circuit Court for the State of Oregon, County of Multnomah, Case Number 1110-12873, for defendant. Outcome: matter settled in favor of client, 2012.

Engagement Six: Restaurant Franchisee v. Franchisor Matter, 2038724 Ontario Ltd., v. Quiznos Canada, Ontario Superior Court, Ontario, Canada, 06-cv-311330 CP, for plaintiff. Provided expert report, focusing on Quiznos earnings and economics topics. Matter settled, 2013, with \$350,000 judgment for client.

Engagement Seven: Restaurant Franchising Analysis, IFA v. City of Seattle, 2:14-cv-00848, Federal District Court, Western Washington. Provided operations and economics report relative to the benefit of franchising. Status: client motion successful, appeal supported, ongoing. Expert report noted by Judge in ruling.

Publications and Presentations: I comment and opine on non-confidential, chain restaurant earnings, economics, and sales, cost and related business issues as a standard outgrowth of my consulting work. I am extremely aware of and always abide to confidentiality agreements and orders not to disclose.

I have presented, facilitated or been panel member of discussions at the 2013 National Restaurant Show, 2014 Restaurant Finance and Development Conference, the 2015 Restaurant Finance and Development Conference (upcoming), the 2012 Women's Foodservice Forum, the 2014 National Association of Certified Valuators and Analysts Annual Conference and the 2010 International Nightclub and Bar National Conference.

My articles and press clips are recorded or linked to on the website, www.pacificmanagementconsultinggroup.com, in their entirety. The copies of major business press quotes are on the website.